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OFFICE OF PETITIONS

In re Application of
Stuart B. Levy et al.
Application No. 10/692,764
Filed: October 23, 2004
Attorney Docket No. 16534-539001US

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:
: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
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This is a decision on the "APPLICATION FOR ADJUSTMENT OF PATENT TERM UNDER 37 C.F.R. § 1.705(b)", filed March 7, 2012. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from 638 days to 821 days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is EIGHT HUNDRED TWENTY-ONE (821) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 8, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 638 days. The instant application for patent term adjustment was timely filed¹. Applicants dispute the reduction of 183 days of PTA for applicant delay in filing an Information Disclosure Statements (IDS) on September 10, 2010 and September 14, 2011 after the filing of a response to Office Actions on April 2, 2010 and August 23, 2011. "Applicants believe that the Office incorrectly attributed 183 days of delay to Applicants under 37 C.F.R. § 1.704. Specifically, Applicants' Supplemental Information Disclosure Statements filed September 10, 2010 and September 14, 2011 both included a statement under 37 C.F.R. § 1.704(d)."

A review of the record reveals that on April 2, 2010 applicants filed a response to the Final Office action mailed December 18, 2009. Then on September 10, 2010, applicants filed an Information Disclosure Statement (IDS). A review of the record also reveals that on August 23, 2011 applicants filed a response to the non-Final Office action mailed May 23, 2011. Then on September 14, 2011, applicants filed an Information Disclosure Statement (IDS). Pursuant to 37 CFR § 1.704(c)(8), the

¹ PALM records indicate that the Issue Fee was also received on March 7, 2012.

submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. The record does not support a conclusion that the IDS was expressly requested by the examiner. Accordingly, filing of the IDS may be considered a failure to engage and a proper basis for reduction.

However, the record supports a conclusion that the IDS was received May 24, 2011 with a 37 CFR 1.704(d) statement.

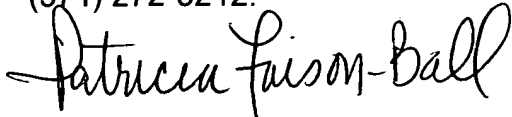
37 CFR 1.704(d) provides that a paper containing only an information disclosure statement in compliance with 37 CFR 1.97 and 1.98 will not be considered (result in a reduction) under 37 CFR 1.704(c)(6), 1.704(c)(8), 1.704(c)(9), or 1.704(c)(10) if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This provision will permit applicants to submit information first cited in a communication from a foreign patent office in a counterpart application to the Office without a reduction in patent term adjustment if an information disclosure statement is promptly (within thirty days of receipt of the first communication) submitted to the Office. Compliance with the statement requirement of 37 CFR 1.704(d) does not substitute for compliance with any relevant requirement of 37 CFR 1.97 or 1.98. 37 CFR 1.704(d) also provides that this thirty-day period is not extendable if the IDS was expressly requested by the examiner, within the meaning of § 1.704(c)(8). Accordingly, no reduction is warranted.

In view thereof, no reduction should have been taken for the filing of the IDS' after the mailing of the response to the Final Office Action on April 2, 2010 and to the non-Final Office Action on August 23, 2011.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

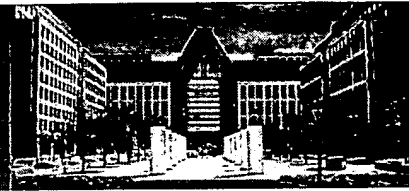
A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial 'P'.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10692764

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[Explanation of PTA Calculation](#)

[Explanation of PTE Calculation](#)

PTA Calculations for Application: 10692764

Application Filing Date:	10/24/2003	OverLapping Days Between (A and B) or (A and C):	0
Issue Date of Patent:		Non-Overlapping USPTO Delays:	1050
A Delays:	1050	PTO Manual Adjustment:	183
B Delays:	0	Applicant Delay (APPL):	412
C Delays:	0	Total PTA (days):	821

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
106	03/19/2012		P028	Adjustment of PTA Calculation by PTO	22	0	
105	03/19/2012		P028	Adjustment of PTA Calculation by PTO	161	0	
94	12/08/2011		MN/=.	Mail Notice of Allowance		0	
93	12/05/2011		OAR	Office Action Review		0	
92	12/05/2011		IREV	Issue Revision Completed		0	
91	12/05/2011		DVER	Document Verification		0	
90	12/05/2011		N/=.	Notice of Allowance Data Verification Completed		0	
89	12/05/2011		DOCK	Case Docketed to Examiner in GAU		0	
88	12/04/2011		CNTA	Allowability Notice		0	
86	11/03/2011		P574	PARALEGAL OR ELECTRONIC TERMINAL DISCLAIMER APPROVED		0	
84	09/30/2011		FWDX	Date Forwarded to Examiner		0	
87	09/14/2011		IDSC	Information Disclosure Statement considered		0	
82	09/14/2011	08/23/2011	M844	Information Disclosure Statement (IDS) Filed		22	83
81	09/14/2011		WIDS	Information Disclosure Statement (IDS) Filed		0	
85	08/23/2011		DIST	Terminal Disclaimer Filed		0	
83	08/23/2011		A...	Response after Non-Final Action		0	
80	05/23/2011	08/02/2010	MCTNF	Mail Non-Final Rejection	294	70	
79	05/23/2011		OAR	Office Action Review		0	
78	05/20/2011		CTNF	Non-Final Rejection		0	
77	09/10/2010		IDSC	Information Disclosure Statement considered		0	
75	09/10/2010	04/02/2010	M844	Information Disclosure Statement (IDS) Filed		161	70
74	09/10/2010		WIDS	Information Disclosure Statement (IDS) Filed		0	
72	04/06/2010		FWDX	Date Forwarded to Examiner		0	
69	04/06/2010		ABN9	Disposal for a RCE / CPA / R129		0	
76	04/02/2010		IDSC	Information Disclosure Statement considered		0	
71	04/02/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	
70	04/02/2010	03/22/2010	RCEX	Request for Continued Examination (RCE)		11	60
68	04/02/2010		XT/G	Request for Extension of Time - Granted		0	
67	04/02/2010		M844	Information Disclosure Statement (IDS) Filed		0	
66	04/02/2010		WIDS	Information Disclosure Statement (IDS) Filed		0	
65	04/02/2010		BRCE	Workflow - Request for RCE - Begin		0	
64	03/11/2010		MCTAV	Mail Advisory Action (PTOL - 303)		0	
63	03/10/2010		CTAV	Advisory Action (PTOL-303)		0	
62	02/25/2010		FWDX	Date Forwarded to Examiner		0	
61	02/22/2010		A.NE	Amendment after Final Rejection		0	
60	12/22/2009		MCTFR	Mail Final Rejection (PTOL - 326)		0	
59	12/18/2009		CTFR	Final Rejection		0	
56	10/16/2009		FWDX	Date Forwarded to Examiner		0	
58	09/08/2009		IDSC	Information Disclosure Statement considered		0	
57	09/08/2009	09/08/2009	M844	Information Disclosure Statement (IDS) Filed		55	
55	09/08/2009	08/06/2009	A...	Response after Non-Final Action		33	52
54	09/08/2009		XT/G	Request for Extension of Time - Granted		0	
53	09/08/2009		WIDS	Information Disclosure Statement (IDS) Filed		0	
52	05/06/2009		MCTNF	Mail Non-Final Rejection		0	
51	05/05/2009		CTNF	Non-Final Rejection		0	
49	03/10/2009		FWDX	Date Forwarded to Examiner		0	
47	03/10/2009		FWDX	Date Forwarded to Examiner		0	
45	03/10/2009		ABN9	Disposal for a RCE / CPA / R129		0	
48	03/03/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	
46	03/03/2009	09/04/2008	RCEX	Request for Continued Examination (RCE)		39	
44	03/03/2009		XT/G	Request for Extension of Time - Granted		0	
43	03/03/2009		BRCE	Workflow - Request for RCE - Begin		0	
41	10/23/2008		PA..	Change in Power of Attorney (May Include Associate POA)		0	
40	10/16/2008		C.AD	Correspondence Address Change		0	
39	09/04/2008	06/04/2008	N/AP	Notice of Appeal Filed		92	36

38	09/04/2008	XT/G	Request for Extension of Time - Granted	0
37	03/31/2008	DOCK	Case Docketed to Examiner in GAU	0
36	03/04/2008	MCTFR	Mail Final Rejection (PTOL - 326)	0
35	02/19/2008	CTFR	Final Rejection	0
32	11/19/2007	FWDX	Date Forwarded to Examiner	0
31	11/05/2007	08/04/2007 A...	Response after Non-Final Action	93 28
30	11/05/2007	XT/G	Request for Extension of Time - Granted	0
29	09/05/2007	C.ADB	Correspondence Address Change	0
28	05/04/2007	MCTNF	Mail Non-Final Rejection	0
27	04/30/2007	CTNF	Non-Final Rejection	0
25	03/09/2007	FWDX	Date Forwarded to Examiner	0
24	02/20/2007	ELC	Response to Election / Restriction Filed	0
23	01/19/2007	12/24/2004 MCTRS	Mail Restriction Requirement	756 0.5
22	01/08/2007	CTRS	Restriction/Election Requirement	0
21	01/05/2007	DOCK	Case Docketed to Examiner in GAU	0
20	11/24/2006	DOCK	Case Docketed to Examiner in GAU	0
26	06/08/2006	IDSC	Information Disclosure Statement considered	0
19	06/08/2006	RCAP	Reference capture on IDS	0
18.7	06/08/2006	M844	Information Disclosure Statement (IDS) Filed	0
18	06/08/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
17	05/02/2006	DOCK	Case Docketed to Examiner in GAU	0
16	10/28/2004	DOCK	Case Docketed to Examiner in GAU	0
15	06/22/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
14	06/22/2004	DOCK	Case Docketed to Examiner in GAU	0
13	05/03/2004	WROIPE	Application Return from OIPE	0
12	05/03/2004	ROIPE	Application Return TO OIPE	0
11	05/03/2004	OIPE	Application Dispatched from OIPE	0
10	05/03/2004	COMP	Application Is Now Complete	0
9	04/22/2004	ADDFL FEE	Additional Application Filing Fees	0
8	04/22/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
7	02/20/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
6	01/28/2004	L128	Cleared by L&R (LARS)	0
5	01/22/2004	L126	Auto Referred by PALM Pre Exam	0
4	01/16/2004	L194	Cleared by OIPE CSR	0
3	01/16/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	12/09/2003	SCAN	IFW Scan & PACR Auto Security Review	0
1	10/24/2003	IEXX	Initial Exam Team nn	0
0.5	10/24/2003	EFILE	Filing date	0

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